

§ 301.9100-17T

26 CFR Ch. I (4-1-08 Edition)

by July 21, 1975. If X does not make the election under section 463, X will be treated as having initiated a change in its method of accounting for vacation pay in its taxable year ending on January 31, 1973.

Example (2). Y, a calendar year taxpayer files its returns based on the accrual method of accounting. Y deducted its vacation pay amounts only when paid since such amounts were contingent when earned and Y was not entitled to the benefits of I.T. 3956. Y may elect for its taxable year ending on December 31, 1974, to deduct certain amounts with respect to contingent vacation pay which were not otherwise deductible, by filing an election pursuant to these regulations with its timely filed income tax return for such year or if such return was already filed by [insert date 90 days after publication of this document as a Treasury decision], without such election, by filing the election with an amended return filed by July 21, 1975. If Y

does not make the election for its taxable year ending on December 31, 1974, Y may make the election with respect to any subsequent taxable year by filing an election with its return for such year.

[T.D. 7353, 40 FR 17554, Apr. 21, 1975; 40 FR 25590, June 17, 1975. Redesignated by T.D. 8435, 57 FR 43896, Sept. 23, 1992]

§ 301.9100-17T Procedure applicable to certain elections.

(a) *Elections covered by temporary rules.* The sections of the Internal Revenue Code of 1954, or of the Tax Reform Act of 1969, to which paragraph (b) of this section applies and under which an election or notification may be made pursuant to the procedures prescribed in such paragraph are as follows:

Section	Description of election	Availability of election
(1) First category: 231(d)(2) of Act	Moving expenses	Expenses paid or incurred before July 1, 1970, if employee was notified of move by employer on or before Dec. 19, 1969.
503(c)(2) of Act	Carved-out mineral production payments	All mineral production payments carved out of mineral properties after beginning of last taxable year ending before Aug. 7, 1969.
516(d)(3) of Act	Contingent payments by transferee of franchise, trademark, or trade name.	Payments made in taxable years ending after Dec. 31, 1969, and beginning before Jan. 1, 1980, on transfers made before Jan. 1, 1970.
642(c)(1) of Code ..	Charitable contributions of estates or trusts paid in following year.	Amounts paid in any taxable year beginning after Dec. 31, 1969.
1251(b)(4) of Code	No additions to excess deductions account of taxpayers electing to compute taxable income from farming in certain manner.	Any taxable year beginning after Dec. 31, 1969.
(2) Second category: 184(b) of Code	Amortization of qualified railroad rolling stock	Any taxable year beginning after Dec. 31, 1969, in which rolling stock was placed in service (or succeeding taxable year).
(3) Third category: 504(d)(2) of Act	Notification not to have sec. 615(e) election treated as a sec. 617(a) election.	Exploration expenditures paid or incurred after Dec. 31, 1969.

(b) *Manner of making election or serving notice—(1) In general.* (i) Except as provided in subparagraph (2) of this paragraph, a taxpayer may make an election under any section referred to in paragraph (a) (1) or (2) of this section for the first taxable year for which the election is required to be made or for the taxable year selected by the taxpayer when the choice of a taxable year is optional. The election must be made not later than (a) the time, including extensions thereof, prescribed by law for filing the income tax return for such taxable year or (b) 90 days after the date on which the regulations in this section are filed with the Office

of the Federal Register, whichever is later.

(ii) The election shall be made by a statement attached to the return (or an amended return) for the taxable year, indicating the section under which the election is being made and setting forth information to identify the election, the period for which it applies, and the facility, property, or amounts to which it applies.

(2) *Additional time for certain elections.* An election under section 503(c)(2) of the Act or section 642(c)(1) of the Code must be made in accordance with subparagraph (1) of this paragraph but not

later than (i) the time, including extensions thereof, prescribed by law for filing the income tax return for the taxable year following the taxable year for which the election is made or (ii) 90 days after the date on which the regulations in this section are filed with the Office of the Federal Register, whichever is later.

(3) *Notification as to section 615(e) election.* (i) The notification referred to in paragraph (a)(3) of this section in respect of an election under section 615(e) which was made before the date on which the regulations in this section are filed with the Office of the Federal Register shall be made in a statement attached to the taxpayer's income tax return for the first taxable year in which expenditures are paid or incurred after December 31, 1969, which would be deductible by the taxpayer under section 617 if he so elects. The statement shall indicate the first taxable year for which such election was effective and the district director, or the director of the regional service center, with whom the election was filed.

(ii) The notification referred to in paragraph (a)(3) of this section, in respect of an election under section 615(e) which is made on or after the date on which the regulations in this section are filed with the Office of the Federal Register, shall be made in the statement of election required by paragraph (a)(2) of § 15.1-1 of this chapter (Temporary Income Tax Regulations Relating to Exploration Expenditures in the Case of Mining).

(iii) The serving of notice pursuant to this subparagraph shall not preclude the subsequent making of an election under section 617(a). A failure to serve notice pursuant to this subparagraph shall be treated as an election under section 617(a) and paragraph (a)(1) of § 15.1-1 of this chapter with respect to exploration expenditures paid or incurred after December 31, 1969, whether or not the taxpayer subsequently revokes his election under section 615(e) with respect to exploration expenditures paid or incurred before January 1, 1970.

(iv) For rules relating to the revocation of an election under section 615(e), including such an election which is treated pursuant to this subparagraph

as an election under section 617(a), see paragraph (a) of § 15.1-2 of this chapter (T.D. 6907, C.B. 1967-1, 531, 535).

(c) *Effect of election*—(1) *Revocations*—(i) *Consent to revoke required.* Except as provided in subdivision (ii) of this subparagraph, an election made in accordance with paragraph (b)(1) of this section shall be binding unless consent to revoke the election is obtained from the Commissioner. An application for consent to revoke the election will not be accepted before the promulgation of the permanent regulations relating to the section of the Code or Act under which the election is made. Such regulations will provide a reasonable period of time within which taxpayers will be permitted to apply for consent to revoke the election.

(ii) *Revocation without consent.* An election made in accordance with paragraph (b)(1) of this section may be revoked without the consent of the Commissioner not later than 90 days after the permanent regulations relating to the section of the Code or Act under which the election is made are filed with the Office of the Federal Register, provided such regulations grant taxpayers blanket permission to revoke that election within such time without the consent of the Commissioner. Such blanket permission to revoke an election will be provided by the permanent regulations in the event of a determination by the Secretary or his delegate that such regulations contain provisions that may not reasonably have been anticipated by taxpayers at the time of making such election.

(iii) *Election treated as tentative.* Until the expiration of the reasonable period referred to in subdivision (i) of this subparagraph or the 90-day period referred to in subdivision (ii) of this subparagraph, an election under section 433(d)(2) of the Act will be considered a tentative election, subject to revocation under the provisions of such subdivisions.

(iv) *Place for filing revocations.* A revocation under subdivision (i) or (ii) of this subparagraph shall be made by filing a statement to that effect with the district director, or the director of the regional service center, with whom the election was filed.

(2) *Termination without consent.* An election which is made in accordance with paragraph (b)(1) of this section under a section referred to in paragraph (a)(2) of this section and is not revoked pursuant to subparagraph (1) of this paragraph may, without the consent of the Commissioner, be terminated at any time after making the election by filing a statement to that effect with the district director, or the director of the regional service center, with whom the election was filed. This statement giving notice of termination must be filed before the beginning of the month specified in the statement for which the termination is to be effective. If pursuant to this subparagraph the taxpayer terminates an election made under any such section, he may not thereafter make a new election under that section with respect to the facility, property, or equipment to which the termination relates.

(d) *Furnishing of supplementary information required.* If the permanent regulations which are issued under the section of the Code or Act referred to in paragraph (a) (1) or (2) of this section to which the election relates require the furnishing of information in addition to that which was furnished with the statement of election filed pursuant to paragraph (b)(1) of this section, the taxpayer must furnish such additional information in a statement addressed to the district director, or the director of the regional service center, with whom the election was filed. This statement must clearly identify the election and the taxable year for which it was made.

(e) *Other elections.* Elections under the following sections of the Code may not be made pursuant to paragraph (b)(1) of this section but are to be made under regulations, whether temporary or permanent, which will be issued under amendments made by the Act. If necessary, such regulations will provide a reasonable period of time within which taxpayers will be permitted to make elections under these sections for taxable years ending before the date on which such regulations are filed with the Office of the Federal Register:

Section	Description
167(k)(1)	Expenditures to rehabilitate low-income rental housing.
167(l)(4)	Post-1969 property of certain utilities representing growth in capacity.
170(b)(1)(D)(iii)	Special limitation with respect to contributions of certain capital gain property.
453(c)	Revocation of election to report income on installment basis.
507(b)(1)(B)(ii) ..	Notice of termination of private foundation status.
1564(a)(2)	Allowance of certain amounts to component member of controlled group of corporations.
4942(h)(2)	Deficient distributions of private foundations for prior taxable years.
4943(c)(4)(E)	Determination of holdings of a private foundation in a business enterprise where substantial contributors hold more than 15 percent of voting stock.

(f) *Cross reference.* For temporary regulations under sections 57(c) and 163(d)(7) of the code, relating to elections with respect to net leases of real property, see § 12.8 of the regulations in this part (Temporary Income Tax Regulations Under the Revenue Act of 1971).

(83 Stat. 487, 85 Stat. 522, 523; 26 U.S.C. 1 nt., 57(c)(4), 163(d)(7))

[T.D. 7032, 35 FR 4330, Mar. 11, 1970]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 301.9100-17T, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 301.9100-18T Election to include in gross income in year of transfer.

(a) *In general.* Under section 83(b) of the Internal Revenue Code of 1954 any person who performs services in connection with which property is transferred which at the time of transfer is not transferable by the transferee and is subject to a substantial risk of forfeiture may elect to include in his gross income for the taxable year in which such property is transferred, the excess of the fair market value of such property at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse) over the amount (if any) paid for such property. If this election is made section 33(a) does not apply with respect to such property, and any subsequent appreciation in the value of the property is not taxable as compensation. However, if